IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6898 OF 2004

Premlata Balkrishna Varma .. Applicant

v/s.

The State of Maharashtra and ors. .. Respondents

Ms.Nandini Gupta i/by M/s.M.P.Vashi & Associates for the applicant.

Mr.R.M.Patne, Assistant Government Pleader for respondent No.1.

Ms.Deepa Chavan i/by M/s.Little & Co. for the respondent Nos.2 and 3.

CORAM : R. M. LODHA AND
R.S. MOHITE, JJ.

DATED : 21st April 2005

ORAL JUDGMENT (Per R.M.Lodha, J.)

Premlata Balkrishna Varma- the petitioner before us was appointed as Assistant Teacher in the primary school (standard Ist to VIIth) run by Ruheia Education Society (Respondent No.7) with effect from 12.6.1981. She was unskilled teacher when she joined service. She completed certificate course in teaching in cardboard work and book binding in the year 1995. She took admission for postal D.Ed. course of Pune University in the academic year 2000-2001. She appeared in the first year examination of postal D.Ed. course held in the month of October, 2002 and failed in all the

six subjects. The next examination for that course was scheduled in the months of April-May, 2003. The petitioner appeared in the first year examination as well as second year examination of postal D.Ed. course held in the months of April-May, 2003. She failed in all the six subjects of the first year examination. As regards the second year examination, she was successful in four subjects and unsuccessful in two subjects. The next postal D.Ed. course examination was held in the month of October, 2003. The petitioner appeared in all the subjects of the first year examination of postal D.Ed. course and the two papers of the second year examination. She was successful in four subjects of the first year examination and she also cleared the two remaining papers of the second year postal D.Ed. course. Thus, by October, 2003, the petitioner had cleared all the papers of second year examination and she was also through in the four subjects of the first year examination of postal D.Ed. course. The two subjects of first year examination of postal D.Ed. course which were yet to be cleared by the petitioner were (one) Hindi-first language and (two) Curriculum and Educational Evaluation.

2. The State Government of Maharashtra on 1.4.2004 issued the resolution/directions granting

concession of exemption to repeater candidates of D.Ed. course for the April, 2004 examination. The respondent No.2- Maharashtra State Examination Council (for short, 'the Council') was intimated accordingly in advance. As a matter of fact, the Council despatched the hall tickets of those candidates like the petitioner also who had exhausted the two attempts already in anticipation of the resolution/directions dated 01.04.2004. The examination were to commence on 6.4.2004. The petitioner was given her hall ticket on 6.4.2004 at Vasai. Her center of the examination was at Nasik. The examination of two papers viz.(i)Hindi- first language and (ii) Curriculum and Educational Evaluation as per the time-table were scheduled on 6.4.2004 and 12.4.2004 respectively. The petitioner did not appear nor could she appear at Nashik in the first language paper fixed on 6.4.2004 as she was given hall-ticket on that very day at Vasai. She did appear on 12.4.2004 in the other paper viz. Curriculum and Educational Evaluation. The result of the examination held in the month of April, 2004 was declared. The petitioner was shown as absent in so far as first language paper was concerned and was declared 'pass' in the other paper viz. Curriculum and Educational Evaluation. The next examination was scheduled in the month of October, 2004. The

petitioner was not permitted to appear for the postal D.Ed. examination in one subject viz., first language held in the month of October, 2004 and that compelled her to approach this court by filing the present writ petition.

3. The Division Bench by order dated 14th September, 2004 issued notice to the respondents and by way of ad-interim order directed the respondents to allow the petitioner to fill up the examination form for the postal D.Ed. examination scheduled in October, 2004. As a result of the ad-interim order, the petitioner appeared in the first language paper of the first year examination of postal D.Ed. course held in the month of October, 2004.

4. On our oral direction, the learned counsel for the Council kept ready the petitioner's answer book in the sealed cover. That was opened before us and the learned counsel for the Council informed us that evaluation thereof indicated that she has cleared the said subject.

5. We heard the learned counsel for the petitioner, the learned AGP and the learned counsel for Maharashtra State Examination Council.

6. The whole thrust of the argument of the learned counsel for the Council is based on the following rule that reads in English thus-

> "A Candidate declared unsuccessful in some subjects, can appear for the examination in those subjects only, to the exclusion of other subjects. However such an opportunity is restricted to the next two consecutive examinations and the candidate will not be entitled to a declaration of 1st and 2nd class.
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> A candidate desirous of obtaining the benefit of the class/grade will have to appear for all the subjects of the examination at one and the same attempt."

7. The facts that we have indicated above would show that the petitioner did exhaust the opportunity provided in the said rule by appearing in the two consecutive examinations held in the months of April, 2003 and October, 2003 in so far as first year examination of postal D.Ed. course is concerned after she appeared and failed in the first year examination held in the month of October, 2002. However, it is not in dispute that on 1.4.2004, the Government issued the resolution /directions thereby providing concession of examination to the repeater candidates for the April, 2004 examination and the respondent No.2 was intimated accordingly. The power of the State Government to issue such direction by virtue of section 26 of the Maharashtra State Council of

Examination Act, 1998 is not in dispute. In view of the Government resolution/direction dated 01.04.2004, the petitioner though had exhausted the opportunity provided in the aforequoted rule became entitled to the concession. The hall ticket was issued to the petitioner on 6.4.2004. It is not in dispute that the examination of the first language paper was fixed on 6.4.2004. It is also not in dispute that the hall ticket was issued to the petitioner at Vasai and her examination center was at Nasik. Was it possible for the petitioner to appear in first language paper at Nasik on 06.04.2004 when the hall ticket was issued to her on that very day at Vasai? Obviously not. However, the Government resolution/direction dated 01.04.2004 clearly indicated that the concession given thereunder was by way of last chance. Speaking strictly the petitioner may not claim as a matter of right further concession under Government resolution/direction dated 01.04.2004. But now since the petitioner has been permitted to appear in the first language paper in the examination held in the month of October, 2004 as a result of ad-interim order passed by this court and the fact, as is seen from the evaluation of the answer book, that she has cleared the said paper, we are of the view that it would be really harsh if now the petitioner is held not entitled to appear in the

first language paper in the examination held in the month of October, 2004.

8. The legal Maxim, "lex non cogit ad impossibilia" came to be considered by the Division Bench of this court in the case of Rajkumarsingh s/o. Dr.K.B.Singh v. Amravati University, Anmravati and anr., 1996(2) Mh.L.J. 627. The Division Bench through one of us (R.M.Lodha, J.) held in paragraphs 7 and 8 of the report thus-

> "7. It is well settled principle of law that the law does not compel a man to do that which he cannot possibly do and the said principle is well expressed in legal maxim, "lex non cogit ad impossibilia" is squarely attracted to the facts and circumstances in the present case. The unforeseen circumstances beyond the control of a student, if resulted in non-appearance in the examination, such circumstances cannot be construed to mean that he failed to present himself at the examination. In this view of the matter, the examination of winter 1993, summer 1994 and winter 1994 in which according to the respondent No.1, the petitioner did not present himself at the examination, cannot be considered against the petitioner and it cannot be held that he did not pass or failed to present himself at the examination in the four consecutive examinations inclusive of the first.
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> 8. Much emphasis was placed by the learned counsel for respondent No.1 on the expression, "four consecutive examinations inclusive of first" appearing in clause 16 of Ordinance 55 and he submitted that if for any reason except the proviso of Clause 16 if the petitioner has not presented himself in examination, it has to be considered that he has failed to present himself at the examination so that only then the effective meaning could be given

> to the expression "four consecutive examinations", otherwise, the word "consecutive" is rendered redundant. We are not at all impressed by this argument. The expression "four consecutive examinations", if read in the light of the context, it would be clear that once an examinee i.e. a student applies for admission to examination and he is issued admission card and then either he fails or does not present himself at the first M.B.B.S. examination, consecutively four times, then he is precluded from prosecuting his studies for the first M.B.B.S. course. In a given case, for unforeseen circumstances, if a student is unable to apply for admission to the examination due to accident or due to any other such circumstances beyond his control and accordingly prevented from taking examination, Clause 16 of the Ordinance 55 cannot be construed in an oppressive and unreasonable manner and preventing student from appearing for the examination while considering whether he has not passed or failed to present himself at the four consecutive examinations or not."

9. Keeping in view the legal maxim, "lex non cogit ad impossibilia"; the peculiar facts and now that the petitioner has already appeared in October 2004 examination pursuant to the ad-interim order, it would be in the interest of justice to direct the Council to declare the petitioner’s result officially.

10. We, accordingly, dispose of the writ petition by following order:

ORDER

The respondent No.2- Maharashtra State Examination Council is directed to declare the petitioner's result in the first language paper for the postal D.Ed. examination held in the month of October, 2004 within two weeks from today and issue her mark-sheet and the certificate of postal D.Ed. course.

No costs.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)